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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, on behalf of himself) Case No. 2:15-cv-05145-DDP-E
and all others similarly situated,)
) **CLASS ACTION**
Plaintiff,)
) **FIRST AMENDED COMPLAINT FOR**
vs.) **VIOLATIONS OF:**
)
) 1. NEGLIGENT VIOLATIONS OF THE
ENAGIC USA, INC.,) TELEPHONE CONSUMER
) PROTECTION ACT [47 U.S.C. §227 ET
Defendant.) SEQ.]
) 2. WILLFUL VIOLATIONS OF THE
) TELEPHONE CONSUMER
) PROTECTION ACT [47 U.S.C. §227 ET
) SEQ.]
) **DEMAND FOR JURY TRIAL**
)
)

Plaintiff, Edward Makaron (“Plaintiff”), on behalf of himself and all others similarly
situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking
damages and any other available legal or equitable remedies resulting from the illegal actions of
ENAGIC USA, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting

1 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act,
2 47. U.S.C. § 227 *et seq.* ("TCPA"), thereby invading Plaintiff's privacy.

3 **JURISDICTION & VENUE**

4 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident
5 of California, seeks relief on behalf of a Class, which will result in at least one class member
6 belonging to a different state than that of Defendant, a company with its principal place of
7 business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in
8 damages for each call in violation of the TCPA, which, when aggregated among a proposed class
9 in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
10 both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of
11 2005 ("CAFA") are present, and this Court has jurisdiction.

12
13
14 3. Venue is proper in the United States District Court for the Central District of
15 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does
16 business within the state of California and Plaintiff resides within this District.

17 **PARTIES**

18
19 4. Plaintiff, EDWARD MAKARON ("Plaintiff"), is a natural person residing in
20 Chatsworth, California and is a "person" as defined by 47 U.S.C. § 153 (10).

21 5. Defendant, ENAGIC USA, INC. ("Defendant"), is a nationwide distributor of
22 alkaline water filtration systems and is a "person" as defined by 47 U.S.C. § 153 (10).

23 **FACTUAL ALLEGATIONS**

24 6. Beginning in or around May of 2015, Defendant contacted Plaintiff on his cellular
25 telephone, (310) 210-3272, in an effort to sell or solicit its services.

26
27 7. On May 18, 2015, Plaintiff received a call from Defendant from telephone
28 number 469-340-4080. Defendant utilized an "artificial or prerecorded voice" as prohibited by

1 47 U.S.C. § 227(b)(1)(A), and played a prerecorded message for Plaintiff that lasted 22 minutes,
2 which appears to be part of a standardized and widespread advertising campaign. During this
3 call, Defendant's agents sought to enlist Plaintiff as an agent-sales representative for Enagic-
4 Kangen alkaline water filtration systems. During this recording, the Enagic representative
5 informs the new potential recruit that as part of their enlistment package, they will receive access
6 to the robo-dialing tool used to contact Plaintiff and access to a "list" of potential customers
7 towards whom they can place such calls.
8

9 8. On May 20, 2015, Plaintiff received a call from one of Defendant's
10 representatives (Gary Nixon), who tried to recruit Plaintiff as a salesperson for Defendant, and
11 suggested Plaintiff watch a video about Defendant's products. Mr. Nixon followed up several
12 days later by sending an email to Plaintiff, referring Plaintiff to Defendant's website and
13 providing other materials.
14

15 9. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C.
16 § 227(a)(1) to place its daily calls to Plaintiff seeking to sell or solicit its business services. The
17 automated/prerecorded message played during the call received by Plaintiff was, on its face, a
18 standard form message, generated automatically, and for purposes of mass marketing and
19 distribution. The message informed Plaintiff of Defendant's business, thus the text message
20 constituted a mass-spam advertisement. Both of these characteristics are indicative of Defendant
21 utilizing an "automatic telephone dialing system" to place the aforementioned phone call.
22

23 10. Defendant's calls constituted calls that were not for emergency purposes as
24 defined by 47 U.S.C. § 227(b)(1)(A).
25

26 11. Defendant's calls were placed to telephone number assigned to a cellular
27 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
28

1 227(b)(1).

2 12. Plaintiff is not a customer of Defendant's services and has never provided any
3 personal information, including his cellular telephone number, to Defendant for any purpose
4 whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to
5 receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on
6 his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
7

8 **CLASS ALLEGATIONS**
9

10 13. Plaintiff brings this action on behalf of himself and all others similarly situated,
11 as a member of the proposed class (hereafter "The Class") defined as follows:

12 All persons within the United States who received any telephone
13 calls from Defendant to said person's cellular telephone made
14 through the use of any automatic telephone dialing system or an
15 artificial or prerecorded voice and such person had not previously
16 consented to receiving such calls within the four years prior to the
17 filing of this Complaint.

18 14. Plaintiff represents, and is a member of, The Class, consisting of All persons
19 within the United States who received any telephone calls from Defendant to said person's
20 cellular telephone made through the use of any automatic telephone dialing system or an artificial
21 or prerecorded voice and such person had not previously not provided their cellular telephone
22 number to Defendant within the four years prior to the filing of this Complaint.

23 15. Defendant, its employees and agents are excluded from The Class. Plaintiff does
24 not know the number of members in The Class, but believes the Class members number in the
25 thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the
26 expeditious litigation of the matter.

27 16. The Class is so numerous that the individual joinder of all of its members is
28

1 impractical. While the exact number and identities of The Class members are unknown to
2 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
3 informed and believes and thereon alleges that The Class includes thousands of members.
4 Plaintiff alleges that The Class members may be ascertained by the records maintained by
5 Defendant.

6
7 17. Plaintiff and members of The Class were harmed by the acts of Defendant in at
8 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
9 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
10 reduced telephone time for which Plaintiff and Class members had previously paid by having to
11 retrieve or administer messages left by Defendant during those illegal calls, and invading the
12 privacy of said Plaintiff and Class members.

13
14 18. Common questions of fact and law exist as to all members of The Class which
15 predominate over any questions affecting only individual members of The Class. These common
16 legal and factual questions, which do not vary between Class members, and which may be
17 determined without reference to the individual circumstances of any Class members, include, but
18 are not limited to, the following:

- 19
20 a. Whether, within the four years prior to the filing of this Complaint,
21 Defendant made any call (other than a call made for emergency purposes
22 or made with the prior express consent of the called party) to a Class
23 member using any automatic telephone dialing system or any artificial or
24 prerecorded voice to any telephone number assigned to a cellular
25 telephone service;
26 b. Whether Plaintiff and the Class members were damages thereby, and the
27 extent of damages for such violation; and
28 c. Whether Defendant should be enjoined from engaging in such conduct in
the future.

19 19. As a person that received numerous calls from Defendant using an automatic
20 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express

1 consent, Plaintiff is asserting claims that are typical of The Class.

2 20. Plaintiff will fairly and adequately protect the interests of the members of The
3 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

4 21. A class action is superior to other available methods of fair and efficient
5 adjudication of this controversy, since individual litigation of the claims of all Class members is
6 impracticable. Even if every Class member could afford individual litigation, the court system
7 could not. It would be unduly burdensome to the courts in which individual litigation of
8 numerous issues would proceed. Individualized litigation would also present the potential for
9 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to
10 all parties and to the court system resulting from multiple trials of the same complex factual
11 issues. By contrast, the conduct of this action as a class action presents fewer management
12 difficulties, conserves the resources of the parties and of the court system, and protects the rights
13 of each Class member.

14 22. The prosecution of separate actions by individual Class members would create a
15 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
16 interests of the other Class members not parties to such adjudications or that would substantially
17 impair or impede the ability of such non-party Class members to protect their interests.

18 23. Defendant has acted or refused to act in respects generally applicable to The Class,
19 thereby making appropriate final and injunctive relief with regard to the members of the
20 California Class as a whole.

21 **FIRST CAUSE OF ACTION**
22 **Negligent Violations of the Telephone Consumer Protection Act**
23 **47 U.S.C. §227 et seq.**
24

25 24. Plaintiff repeats and incorporates by reference into this cause of action the
26
27
28

1 allegations set forth above at Paragraphs 1-25.

2 25. The foregoing acts and omissions of Defendant constitute numerous and multiple
3 negligent violations of the TCPA, including but not limited to each and every one of the above
4 cited provisions of 47 U.S.C. § 227 *et seq.*

5 26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
6 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each
7 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

8 27. Plaintiff and the Class members are also entitled to and seek injunctive relief
9 prohibiting such conduct in the future.
10

11
12 **SECOND CAUSE OF ACTION**
13 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
14 **47 U.S.C. §227 *et seq.***

15 28. Plaintiff repeats and incorporates by reference into this cause of action the
16 allegations set forth above at Paragraphs 1-29.

17 29. The foregoing acts and omissions of Defendant constitute numerous and multiple
18 knowing and/or willful violations of the TCPA, including but not limited to each and every one
19 of the above cited provisions of 47 U.S.C. § 227 *et seq.*

20 30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227
21 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages,
22 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

23 31. Plaintiff and the Class members are also entitled to and seek injunctive relief
24 prohibiting such conduct in the future.
25

26 **PRAYER FOR RELIEF**
27 WHEREFORE, Plaintiff requests judgment against Defendant for the following:
28

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of each and every claim so triable.

Respectfully Submitted this 21st Day of September, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Adrian R. Bacon
Todd M. Friedman
Adrian R. Bacon
Law Offices of Todd M. Friedman
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Filed electronically on this 21st day of September, 2015, with:

United States District Court CM/ECF system

Notification sent electronically on this 21st day of September, 2015, to:

Honorable Judge Dean D. Pregerson

United States District Court

Central District of California

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